IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 2504 of 2002

Between:

1 J.Kumari Indira Bhai, W/o.TVS Ramesh,
Vishakapatnam. Rep.by her GPA holder J.Srirama Chandra Prabhu
S/o.Narayanarao, age : 27 years.
2 Pakalapati Usharani, W/o.P.Sanyasi Varma,
R/o.Ashok Park, Kancharapalem, Vishakapatnam.
3 Smt.K.Mythili, W/o.N.C.Bhogendranath,
R/o.Plot No.206, M.M.Apartments,
Dutch Layout, Vishakapatnam.

..... PETITIONERS

AND

1 The District Collector,
Vishakapatnam.
2 The Commissioner of Police,
Vishakapatnam.
3 The Deputy Commissioner of Police, Urban Division,
Control Room, Vishakapatnam.
4 The Vice Chairman, Vishakapatnam Urban Development Authority,
Vishakapatnam.
5 The Commissioner, Muncipal Corporation of Vishakapatnam,
Vishakapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly in the nature of Writ of Mandamus declaring the action of the respondents 2 and 3 trying to commit the act of trespass, claiming the property as Sy.No.23/1-D3 instead of Sy.No.23/1-D1 and interfering with the peaceful possession of the petitioners in respect of the apartment complex constructed on the site of an extent of 1080 Sq.Yards situated in Sy.No.23/1-D1, Butchirajupalem, Shantinagar, Visakhapatnam as illegal, arbitrary,

unconstitutional and violative of Art.14 of the Constitution of India and consequently direct the respondents not to interfere with the possession of the petitioners in respect of the aforementioned residential apartment complex constructed on site admeasuring 1080 Sq.Yards in Sy.No.23/1D1 of Buchirajupalem, Shantinagar, Visakhapatnam, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.C.B.RAM MOHAN REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR HOME

Counsel for the Respondent No.4: SMT.SUMALINI REDDY

Counsel for the Respondent No.5: MR.T.S.VENKATA RAMANA

The Court made the following:

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.2504 of 2002

ORDER:

The three petitioners claim to be owners of land admeasuring 1080 Sq.yards in Survey No.23/1-D1 (part) situated at Butchirajupalem village, Ward No.44 of Visakhapatnam Municipal Corporation. It is stated that they purchased the property in 1999 and 2000 from one Smt.T.Rajeswari and others under registered sale deeds. After obtaining the property, so as to construct an apartment block with residential flats, they obtained 'No Objection Certificate' (NOC) from Visakhapatnam Municipal Corporation on 16.6.2000. Thereafter they have also obtained necessary building permission on 04.8.2000 and commenced construction in January, 2001. It is also their case that after completion of construction, they sold away the flats to sixteen third parties.

It is alleged that the subordinate officials of respondents-2 and 3 visited the site and claimed that the land on which apartment block constructed was allotted by the first respondent to the police department. They also allege that the subordinate police officers took away the implements from the site. Apprehending forcible eviction or coercive action, the present writ petition is filed seeking a declaration that the action

of the respondent Nos.2 and 3 in trying to trespass into the petitioners' property is illegal and arbitrary.

A counter affidavit is filed by the second respondent. It is stated that the first respondent vide proceedings No.213/B2/93 dated 22.4.1994 allotted 523 Sq.meters of land in Survey No.23/1D3 at Santhinagar, Butchirajupalem, Visakhapatnam to police department for construction of police station building. After survey was conducted, the Reserve Inspector took possession of the vacant site and erected a notice board that the site belongs to police department. It is also alleged that the petitioners obtained NOC from Urban Land Ceiling Authorities for the land comprised in Survey No.23/1D1 in Division No.44 but constructed the apartment block covering the land in Survey No.23/1D3. The allegation made by the petitioners that the officials acted highhandedly is denied. In paragraph No.7 of the counter affidavit, it is stated that the officials of the respondent Nos.2 and 3 went to the site and enquired the workers at the place and that they never tried to trespass into the land.

After hearing the learned Counsel for the petitioner, Sri C.B. Rammohan Reddy and learned Assistant Government Pleader for Home, Sri J.V.Narasimha Reddy, who reiterated the contentions raised in their respective affidavits, one thing becomes clear that there was a dispute with regard to a piece of land and there is also a dispute with regard to survey number assigned to the said land. Both the parties are claiming the land. The petitioners claim the land by reason of the sale deed they obtained from the original vendors in 1999-2000 whereas the respondents 2 and 3 claim the land by reason of the proceedings issued by the first respondent, who allegedly assigned the land to the police department and that such land comprised in Survey No.23/1D3. This is purely a question of fact, which can be decided in a civil Court and writ petition is not a proper remedy. The allegations that the officials of respondents 2 and 3 tried to trespass into the petitioners' land is categorically denied. No reply affidavit is forthcoming from the petitioners. Therefore, the petitioners are not entitled to any relief. If there is any attempt of trespass into the land of petitioners by any person including the respondents 2 and 3 or their officials, the petitioners or their successors in title are at liberty to approach the civil Court and obtain appropriate injunction.

The writ petition, with the above observations, is dismissed. No costs.

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(V.V.S.RAO,J)

23.06.2005

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To

1 The District Collector,
Vishakapatnam.
2 The Commissioner of Police,
Vishakapatnam.
3 The Deputy Commissioner of Police, Urban Division,
Control Room, Vishakapatnam.
4 The Vice Chairman, Vishakapatnam Urban Development Authority,
Vishakapatnam.
5 The Commissioner, Muncipal Corporation of Vishakapatnam,
Vishakapatnam.

6 Two CCs to the G.P for Home, High Court of A.P., Hyderabad(O.U.T).

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